partment of Labor to the United Farmworkers of America. Our initial requests for access to agency documents in connection with this review were denied. At one point, we were told that the grant in question had not been awarded. Later we were told, after the actual selection of the United Farmworkers had been made, that GAO access to all grant-related materials was being denied in order to maintain the confidentiality of the negotiations. A week later our request for access was once again denied by the Director, Office of National Programs of the Employment and Training Administration, and a representative of the DOL Solicitor's Office. To break this impasse, we finally had to write to the Secretary of Labor setting forth our difficulties and views on the matter. It was not until five weeks later that Secretary responded and gave us full access. As a result of this impasse our work was delayed about two months.

3. On a number of occasions we have been denied access to records of military departments on sweeping and general grounds, such as the records are "internal working papers" that should not be released to the GAO or are not "official" agency documents In one instance (February 1978) the Air Force refused to give us copies of certain briefing documents. The denial was based on the fact that the documents were prepared in connection with the Fiscal Year 1980 budget which had not gone to Congress.

These are not merely *ad hoc* denials made by lower level officials, but reflect formal agency policy guidelines which can serve to engender a negative approach to GAO access. For example, a former version of Air Force regulation 11–8 (10 February 1978) acknowledged GAO's statutory right of access but then prescribed detailed procedures for handling requests for sensitive information or denials of GOA requests Concerning this version of Air Force regulation 11–8, we repeadedly contacted Air Force to share with them our concern over its unjustified restrictions on GAO access. After working with Air Force for a considerable time, we received a copy of a revised regulation. Our reaction to this version is that Air Force has finally modified the regulation to accommodate our statutory rights and legitimate working needs, and to foster a positive working relationship between GAO and Air Force.

4. Even more recently (November 13, 1978) we were distressed to learn that the Deputy Assistant Secretary of Defense (Installations and Housing) issued guidelines sharply restricting access by non-Defense personnel to records regarding base closures. This instruction states that prior clearance by the Office of the Secretary of Defense will have to be obtained before giving materials to GAO staff. Like the former version of Air Force regulation 11–8, this instruction engenders a negative view of GAO records requests and could well serve to delay our ultimate receipt of requested documents.

5. The former version of Air Force regulation II–8, referred to above, adversely impacted on our review of the EF–111A Tactical Jamming System. In that review we encountered serious delays and, in some cases, outright denials of our requests for access to records, based upon the regulation. In this instance, the Air Force refused to provide us with daily flight reports on the basis that the records were preliminary test reports insulated from disclosure pursuant to paragraph 18k of regulation 11–8, and should not be released outside of

DOD. Thus, while we visited EF–111A test sites, development and operational test officials would not give us any test results or even discuss them.

6. In connection with our review of the World Wide Military Command and Control System (WWMCCS) we have experienced three types of access to records difficulties: outright denials of access to records; delayed access to records; and denial of access to principal responsible officials. The goal of this congressionally requested review is to assess the ability of the WWMCCS system to satisfy military command and control requirements during a time of crisis. We began our work in early September 1978 when initial contact was made with the Office of the Joint Chiefs of Staff (JCS). In response to repeated written requests for access, JCS wrote that there were problems in releasing the requested information to GAO—in fact, that certain information was possibly not disclosable at all.

In summary, we have encountered outright denials of access as well as delays in getting documents. For example, one set of materials was not received until 36 days after our request; another records request took 44 days before we received the documents. And, in one case, over 100 days have elapsed and we still have yet to receive requested materials. Other documents have been denied on the basis they are "draft" documents since they were yet to be approved by JCS. The Command and Control Technical Center approved the "draft" on August 21, 1978, and the document is available to other U.S. Government agencies upon request.

We also have been flatly denied access to the comments of command participants during exercises. We sought these materials to see how the WWMCCS data processing systems supports the needs of the decision makers. On December 20, 1978, JCS told us the request was denied because the comments are considered internal documents and represent the opinion of the participants.

7. An access problem with NASA arose in July of 1978. Initially NASA would not grant us full access to the records of the NASA Council which we need to effectively perform two assignments. One of these assignments is a survey of NASA's planning and selection of projects to meet national needs. The other is to respond to a request from the Chairman, Subcommittee on Federal Spending Practices and Open Government, Committee on Governmental Affairs, to review civil agencies' progress in implementing OMB Circular A–109. NASA officials stated that they were reluctant to grant us full access to the records because they did not want to prematurely expose "pre-decisional material," and because of the need to preserve uninhibited freedom of expression by NASA personnel. In recognition of NASA's concerns we agreed to attempt performing our assignments with less than full access to needed records. We found that our restricted access to records was not satisfactory. In his letter of November 9, 1978, the NASA Administrator, proposed a solution to GAO's problem under which NASA would (1) screen material prior to its release to GAO, and (2) withhold "informal" materials such as that prepared by "working-level" personnel if release of such would damage mechanisms for the internal communication of candid personal viewpoints.

By letter of December 12, 1978, we informed the NASA Adminis-

trator that his November 9 proposal was unacceptable. Our letter (1) reaffirmed GAO's right to examine planning and budgetary data, (2) explained GAO's policy of judicious handling of such data, and (3) rejected NASA's proposal that GAO accept information which had been screened. The letter also asked for a prompt resolution of all data requests made by GAO on the two assignments. We received a response by letter from the Administrator dated January 18, 1979, indicating that the requested documents would be provided. Although we ultimately obtained the materials in March 1979, we encountered a delay of about 9 months between our initial request and actual receipt of the materials.

8. We were unable to complete certain portions of a congressionally requested review of foreign military sales activities, specifically, various aspects of the Executive branch policy and decision-making process on conventional arms transfers, because the Executive branch denied us necessary information. Furthermore, the Executive branch would not provide us with the legal basis for the denial. Not only were serious restrictions placed on our records examination by the Executive branch but we also were denied access to a significant number of documents related to the decision-making process and variations in that process. Some of the officials involved in the process said they were not even permitted to discuss the details of individual decisions with us. In essence, the Department of State was only willing to describe to us the arms transfer decision-making process in the abstract and provide us chronologies of specific arms sales cases. It was unwilling to discuss certain matters relating to these cases. Furthermore, the Department would not permit us to verify the decision-making process or variations in the process by tracing any case to the actual decision. Our difficulties in completing this assignment were noted both in our report to the Congress and in testimony before two congressional committees.

Perhaps the most frequent delay situations we encounter, and the most difficult to deal with, are those in which it is unclear whether a real access problem even exists. We may get no specific response to a request for access within a reasonable time. Follow-up inquiries may elicit that the request is being processed through various channels within the agency or there may be vague allusions to "possible problems" which are under consideration. Unlike situations in which the agency at least articulates specific objections or concerns, we have nothing to respond to here in terms of attempting a resolution. In all probability the records will be provided eventually; but in the meantime assignments have been set back for unclear reasons or, perhaps, for no reason other than indifference or foot-dragging.

We anticipate that the existence of a judicial enforcement remedy would have a very substantial and beneficial impact on each type of delay discussed above. The deterrent effect alone should instill in agencies a greater sensitivity to the need for prompt responses to our access requests, thereby generally speeding up the process. It should also encourage agencies to quickly focus upon and articulate any real problems which do exist, so that they can at least be approached in a constructive manner.

We recognize that agencies may have sincere and legitimate concerns for the protection of sensitive information. We have always

respected these concerns, and we have not hesitated to seek accommodations which afford maximum protection to the agency's information while assuring that our audit responsibilities are carried out effectively. Enactment of the judicial enforcement remedy would not change this fundamental approach. It would, however, effect more subtle changes by placing us on an equal footing with the agencies for purposes of negotiation. While this will probably result in some differences from current practice in the substance of access arrangements, we anticipate that the most significant effect will be to reduce substantially the time required for the negotiation process.

Difficulties with Non-Federal Organizations

The previous discussion centers on our access experiences with Federal agencies and the anticipated effects of a judicial enforcement remedy. Generally, this discussion applies as well to access problems involving non-Federal organizations, such as contractors and grantees, and to the proposed subpoena authority which would provide the remedy here.

While cooperation is quite good as a general rule, access problems do arise in the form of challenges to GAO's legal authority, delays due to the informal resolution of stated issues, and delays involving uncertain factors. One possible difference in approach is that non-Federal organizations tend to be less familiar with GAO's functions and authorities. Issues are more likely to arise concerning the basis and scope of our legal access rights, and, in effect, our access rights are more varied than at the Federal level. Also, State laws and procedures may come into play.

As a result, we have encountered delays caused merely by the need to provide organizations—particularly grantees—with detailed statements of our authority. For example, the grantee (or its attorneys) may be entirely willing to cooperate, but may still insist on a formal statement of authority for its own protection in releasing information to us. Thus in a non-Federal context, the presence of a subpoena power on the statute books should be most useful as a means of avoiding access delays at the outset, particularly where the potential problem is lack of familiarity with GAO rather than a desire to resist.

At the risk of stating the obvious, our overriding interest in dealing with non-Federal organizations (as it is, of course, with Federal agencies) is to obtain the access necessary to accomplish our functions as promptly as possible. This can best be achieved by approaching such organizations in a non-adversary manner, but with the necessary legal remedies to support our access authority and evidence our ability to pursue access.

Our experience under title V of the Energy Policy and Conservation Act, 42 U.S.C. §§ 6381 et seq., illustrates the success of this approach. Title V grants GAO subpoena authority in the conduct of verification examinations of energy information. Since the statute was enacted in December 1975, we have obtained company information under title V from 68 different energy companies and conducted on-site audits of certain books and records of 32 companies. All of this has been accomplished without the need to issue a single subpoena. Some companies have been defensive about our involvement and sensitive about complying with our requests for information, especially

where we sought proprietary or competitive data. Nevertheless, voluntary compliance has enabled us to obtain the necessary information to complete our reviews. We are convinced that the existence of our title V subpoena authority is, in large measure, responsible for these results.

Two title V reviews in particular illustrates the importance of having subpoena power. One involved a review of coal operators' books and records supporting coal reserve estimates on public lands. This review involved the top 20 leaseholders of Federal coal and required access to information which was of a very confidential and proprietary nature. Our requests initially drew resistence from several of the companies. Officials of several companies acknowledged that the only reason they would give us the information is because they knew that through our enforcement powers we would, in all likelihood, obtain it in the long run. In another instance,we requested access to management and financial information regarding the construction of the trans-Alaskan pipeline. Although Alyeska—the service company representing several major petroleum companies—never acknowledged our rights under title V, they did give us the information we requested. Again, it appears, this was because of our enforcement powers and the company's interest in avoiding a court battle.

GAO was also given subpoena power relating to social security programs by the Medicare-Medicaid Antifraud and Abuse Amendments, 42 U.S.C. § 1320a–4. We have not developed as much experience under this subpoena provision. We believe that it will prove to be equally useful. Likewise, we are confident that affirmative results could be obtained if GAO is provided general subpoena power to enforce its existing access rights by law or agreement to records of non-Federal organizations.

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